

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X

Chapter 7

In re:

**PETER BILLERA,**

Case No.: 09-72351-reg

Debtor.

Judge Robert E. Grossman

-----X

**NOTICE OF MOTION TO**  
**AVOID LIEN IMPAIRING HOMESTEAD EXEMPTION**

**PLEASE TAKE NOTICE**, that **PETER BILLERA**, the debtor herein, will make a Motion before the Honorable Robert E. Grossman, at the United States Bankruptcy Court for the Eastern District of New York, 290 Federal Plaza, Central Islip, New York, on **August 19 at 9:30 a.m.**, or as soon thereafter as counsel may be heard, for an Order pursuant to Code § 522 (f) avoiding the judicial lien of creditor **American Express**, which lien impairs the debtor's homestead exemption, and for such other and further relief as this Court deems just and proper.

**PLEASE TAKE FURTHER NOTICE**, that answering papers, if any, shall be filed with the Clerk of the Court and served upon CRAIG D. ROBINS, attorney for the debtor, 180 Froehlich Farm Blvd., Woodbury, New York 11797, at least three (3) days before the scheduled hearing.

**PLEASE TAKE FURTHER NOTICE**, that absent any objection, the Judge may sign the annexed Order on the motion return date.

Dated: Woodbury, New York  
July 8, 2009

*/s/ Craig D. Robins*

---

**CRAIG D. ROBINS, ESQ.**  
Attorney for the Debtor  
180 Froehlich Farm Blvd.  
Woodbury, New York 11797  
(516) 496-0800

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
In re:

Chapter 7

**PETER BILLERA,**

Case No.: 09-72351-reg

Debtor.  
-----X

**APPLICATION FOR AN ORDER**  
**AVOIDING THE JUDICIAL LIENS OF CREDITORS**

**CRAIG D. ROBINS, ESQ.**, an attorney duly admitted to practice law in the State of New York and before this Court, affirms the following to be true under the penalty of perjury:

1. I am the attorney for PETER BILLERA, the Debtor herein ("Debtor"), and as such, I am fully familiar with the facts and circumstances of this matter.
2. This Court has jurisdiction of this Motion pursuant to 28 U.S.C. § 157 and 1339. Venue of this proceeding is proper pursuant to 28 U.S.C. § 1409. The statutory predicate for the relief sought here is 11 U.S.C. § 522 (f), and Federal Rules of Bankruptcy Procedure Rule 1009 and Rule 5010.
3. The Debtor filed a voluntary Chapter 7 bankruptcy petition with this Court on April 8, 2009. The debtor owns his home with his non-debtor spouse as tenants by the entirety.
4. The debtor listed **American Express** in his bankruptcy petition as a creditor holding a secured claim in Schedule "D".

5. American Express commenced an action under Index Number 16113/2008 in the Supreme Court of the State of New York, County of Nassau on August 19, 2008. Thereafter, American Express obtained a judgment against the debtor, in the sum of \$68,515.65. The judgment was entered on December 31, 2008, and docketed by the Nassau County Clerk on December 16, 2008. A copy of the Notice of Entry and lien search are attached hereto as **Exhibit “A”**. The creditor’s attorney is Jaffe & Asher, LLP., located at 600 Third Avenue, New York, NY 10016. American Express is located at P.O. Box 360001, Fort Lauderdale, FL 33336-0001.
6. The fair market value of the debtors’ residence, located at 8 Comet Road, Syosset, New York at the time they filed their petition was \$605,000.00 as established by a Uniform Residential Appraisal Report, prepared by licensed real estate appraiser Michael Coogan. A copy of this appraisal is attached as **Exhibit “B”**.
7. As of the date of the filing of the Debtor’s petition, there were two consensual mortgage liens on the debtor’s residence. The first lien is a mortgage with GMAC. As indicated by a statement from the mortgagee, attached as **Exhibit “C”**, the amount of this secured claim totaled \$471,212.73 as of the date of filing. The second lien is with Chase Home Mortgage. As indicated by a statement from the mortgagee, attached as **Exhibit “D”**, the amount of this secured claim totaled \$115,460.02 as of the date of filing. Upon information and belief, no other liens attaching to the debtor’s residence exist at that time other than the mortgage liens and judgment set forth herein.

9. Since the debtor's house was worth \$605,000, and the mortgage liens add up to \$586,672, the debtor had substantial equity in the subject premises at the time of his Chapter 7 filing.
10. As such, the debtor is entitled exempt equity in his home pursuant to the provisions of the New York Civil Practice Law and Rules § 5206 (a), in the sum of \$50,000.
11. The lien from the American Express impairs the equity that the debtor is afforded under the debtor's homestead exemption. Accordingly, the lien must be avoided to the extent that it impairs the debtor's homestead exemption pursuant to Bankruptcy Code section 522(f),
12. No novel issues of law are involved in this application and it is respectfully requested that the Court waive the filing of any memorandum of law.
13. A proposed Order is annexed hereto, a copy of which is being served upon all interested parties together with a copy of this application.

**WHEREFORE**, the Debtor respectfully requests that this Court grant an Order avoiding the judicial liens set forth above and for such other and further relief as this Court deems just and proper.

Dated: Woodbury, New York  
July 8, 2009

*/s/ Craig D. Robins*

---

**CRAIG D. ROBINS (CR-5938)**  
Attorney for the Debtor  
180 Froehlich Farm Blvd.  
Woodbury, New York 11797  
(516) 496-0800

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X

In re:

**PETER BILLERA**

Debtor.

**CERTIFICATE OF SERVICE  
BY MAIL**

-----X

**CRAIG D. ROBINS, ESQ.** says; I am not a party to this action, I am over 18 years of age; I reside in the County of Suffolk in the State of New York.

On July 8, 2009, I served a true copy of this Notice of Motion and supporting papers by enclosing a true copy in a postage paid wrapper, and depositing it in an official depository under the exclusive care and custody of, the U.S. Postal Service within the State of New York, addressed to those parties set forth on the annexed service list.

*/s/ Craig D. Robins*

\_\_\_\_\_  
**CRAIG D. ROBINS**

To:  
United States Bankruptcy Court  
Attn: Motion Intake Clerk  
290 Federal Plaza  
Central Islip, New York

## **SERVICE LIST**

Office of United States Trustee  
560 Federal Plaza  
Central Islip, NY 11722

Andrew Thaler, Trustee  
90 Merrick Avenue Suite 400  
East Meadow, NY 11554

American Express  
P.O. Box 360001,  
Fort Lauderdale, FL 33336-0001

Jaffe & Asher, LLP  
600 Third Avenue  
New York, NY 10016

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK**

CR-5938  
**Case No.: 09-72351-reg**

---

**IN RE:**

**PETER BILLERA,**

**Debtor.**

---

**CHAPTER 7**

**NOTICE OF MOTION FOR ORDER  
AVOIDING JUDGMENT LIEN  
IMPAIRING HOMESTEAD EXEMPTION**

---

**CRAIG D. ROBINS, ESQ.  
Attorney for Debtors  
180 Froehlich Farm Blvd.  
Woodbury, NY 11797  
(516) 496-0800**